

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELISSA BARGE,
Plaintiff,
v.
MARC HORWITZ, et al.,
Defendants.

Case No. 21-cv-02558-HSG

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION RE REVIEW
UNDER 28 U.S.C. § 1915**

Re: Dkt. No. 11

The Court has reviewed Magistrate Judge Spero's Report and Recommendation Re Review Under 28 U.S.C. § 1915. The Court has also reviewed Plaintiff's objections to the report, Dkt. No. 14, and Plaintiff's Motion for Leave of Court, Dkt. No. 15, which repeats the arguments Plaintiff made in her objections. The Court finds the Report correct, well-reasoned and thorough, and adopts it in every respect. Accordingly,

IT IS HEREBY ORDERED that the following claims are dismissed: 1) all of Plaintiff's claims against the Alameda Police Department and the City of Alameda; 2) the Fourth Amendment claim against Officer Hurwitz to the extent it is based on excessive force and all of the state law claims asserted against Officer Hurwitz; and 3) the Fifth Amendment claim asserted against Ken Bett's Towing. Plaintiff is given leave to amend except as to the Section 1983 claims against the Alameda Police Department, which cannot be cured. Plaintiff must file any amended complaint within 28 days of the date of this Order. Plaintiff's Motion for Leave of Court, Dkt. No. 15, is **DENIED**.

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The Court **ORDERS** service of the First Amended Complaint, Dkt. No. 9, on all Defendants. If any Defendant files a motion to dismiss the First Amended Complaint prior to Plaintiff filing a further amended complaint, the Defendant may simply note any claims that were dismissed with leave to amend, and Plaintiff will need to correct the deficiencies identified in the Report and Recommendation in any further amended complaint.

IT IS SO ORDERED.

Dated: 12/21/2021


HAYWOOD S. GILLIAM, JR.
United States District Judge